

LEONARDA T. AVEDANA, PURIFICACION T. TIMBANG, EMILIANA T. BAUTISTA AND EVANGELINE BAUTISTA-ORTIZ, PETITIONERS, VS. HON. COURT OF APPEALS, HON. JUDGE MANUEL P. DUMATOL, IN HIS CA...

G.R. No. 83092. October 05, 1989

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari seeking the reversal of: (a) the February 8, 1988 decision of the Court of Appeals in Civil Case No. CA-G.R. SP No. 13739 entitled "Leonarda T. Avedana, et al. v. Hon. Judge Manuel P. Dumatol, et al. affirming the decision of the Court of First Instance of Rizal, Branch XXIX, Pasay City dated May 26, 1973 in Civil Case No. 3782-P entitled "Manolito N. Bautista v. Leonarda Avedana, et al." ejecting defendants-petitioners and (b) the resolution dated April 22, 1988 denying petitioners' motion for reconsideration.

The undisputed facts of the case are as follows:

Manuel Bautista (deceased) father of private respondent Manolito Bautista, was the owner of a residential lot located at 316 G-Villanueva St. Pasay City containing an area of 455 sq. meters covered by T.C.T. No. T-2210 issued in his name. Said lot was a separate property of Manuel Bautista having inherited the same from his father, Mariano. (Rollo, pp.12-13)

A portion of the above-mentioned 455 sq. meters, measuring 125 sq. meters, was leased for an indefinite period by Manuel Bautista to petitioners Leonarda Avedana and Purificacion T. Timbang, on the lot a two storey semi-concrete house was built by the lessees. (Rollo, p. 13)

Manuel Bautista married twice. In his first marriage he had eight (8) children, one of them is the private respondent Manolito Bautista; in the second marriage he begot only one child, Evangeline, a co-petitioner. (Rollo, p. 13)

On December 22, 1966, the herein private respondent together with his brother and sisters executed a deed of extra-judicial partition of the estate of their mother, Juliana Nojadera, but such deed referred not to the estate of Juliana but that of the father, Manuel Bautista, for in truth the mother did not have any estate of her own. (Rollo, p. 13).

Without the knowledge of the father the deed of extra-judicial partition was registered by the Register of Deeds of Pasay and T.C.T. No. 2210 was cancelled in lieu of T.C.T. No. T-14182 in the names of his eight children. (Rollo, pp. 13-14)

On September 27, 1967, said children executed a deed of absolute sale transferring said parcel of land to their brother Manolito Bautista by virtue of which T.C.T. No. T-14182 was cancelled and in lieu thereof T.C.T. No. T-14186 was issued in the name of Manolito alone. (Rollo, p. 13)

On August 27, 1969, Manolito sold back the above-mentioned land in favor of his sisters, and upon registration of the sale T.C.T. Nos. T-15665, T-15666, T-15667, T-15668, T-15669, T-15670 and T-15671 were issued. (Rollo, p. 13)

On April 28, 1972, private respondent Manolito Bautista claiming now to be the owner of the property in question filed a complaint in the Court of First Instance of Pasay, Civil Case No. 3782-P ejecting petitioners from the premises leased by them from Manuel Bautista. (Rollo, Annex "A" pp. 35-37)

On May 26, 1973, Judge Arsenio Alcantara rendered a decision the dispositive part which reads as follow:

- a) declaring plaintiff as the lawful owner of lot No. 2090-C-2-A, located at G. Villanueva St. Pasay City;
- b) ordering defendants to turn over the possession of litigated land to plaintiff;
- c) ordering defendants to demolish the old house erected thereon, and to vacate the premises without further delay;
- d) ordering defendants to pay the amount of P1,340.00 as accrued rentals since October, 1967 computed at P20.00 a month with interest thereon at the rate of 6% per annum counted from October, 1967 up to the termination of this case;
- e) ordering defendant to pay P500.00 as attorney's fees and to pay the costs." (Rollo, Annex "B" pp. 39-45).

Dissatisfied with the decision, the petitioners appealed to the Court of Appeals, which rendered a decision on February 1, 1977, modifying the judgment of the trial court, as follows:

"WHEREFORE, the judgment appealed from is hereby modified as follows:

- (1) declaring the plaintiff as the lawful owner of the property in question and ordering defendants to vacate the premises and to turn over the possession of the property to plaintiff, subject to the provisions of Article 1678 of the Civil Code which the lower court shall determine in appropriate proceedings;
- (2) ordering defendants to pay plaintiff the rentals for the occupancy of the premises at the rate of P20.00 a month from February, 1970 up to the time the premises are turned over to the plaintiff with 6% (interest) per annum;
- (3) ordering defendants to pay plaintiff P500.00 attorney's fees and the costs of suit." (Rollo, Annex "C" pp. 46-57)

On November 11, 1977, petitioners Avedana and Timbang filed a complaint with the Court of First Instance of Rizal, docketed as Civil Case No. 5961-P, seeking to annul the judgment rendered by the Court of First Instance of Rizal in Civil Case No. 3782-P. Said complaint having been dismissed, the petitioners appealed the order of dismissal to the Court of Appeals which certified the case to the Supreme Court on the ground that the appeal involved purely questions of law. (Rollo, Decision, p. 152)

On April 8, 1986, the Supreme Court rendered a decision, sustaining the order of the lower court's dismissal of the petitioners' complaint. (Rollo, Annex "D" pp. 58-62)

On the basis of the foregoing developments, the herein private respondent Manolito Bautista sought to execute the decision of the lower court as early as November 11, 1975 but the same was not implemented. The lower court itself has held in abeyance the ejectment of the herein petitioners precisely because of the nagging issue of ownership of the property in question which is now the subject of the case entitled "Emiliana Bautista, et al. v. Hon. Justice Carolina C. Grino-Aquino." G.R. No. L-19959 which was then still pending before this Court. (Rollo, pp. 85-86, Annex "T" pp. 113-124)

Private respondent Manolito Bautista on July 16, 1987 tried to revive his motion for execution and for writ of demolition of the house erected by petitioners on the leased premises. On the same date, the trial court granted the motion and a writ of execution was issued on July 20, 1987. On July 27, 1987 petitioners filed a motion to quash the writ of execution and opposition to motion for demolition. (Rollo, Annex "E" pp. 63--64, Annex "F" pp. 65-66)

On September 30, 1987, respondent Judge Manuel Dumatol issued an order denying petitioners' motion to quash writ of execution and granted the motion for demolition. On October 1, 1987, petitioners moved for reconsideration of the aforesaid order but the same was denied in the order dated January 4, 1988 and a writ of demolition was issued on January 6, 1988. (Rollo, Annex "G" pp. 67-68; Annex "H" pp. 69-70, Annex "J" p. 71).

On January 7, 1988, petitioners filed a motion to set aside the order of January 4, 1988 and the writ of demolition dated January 6, 1988. (Rollo, Annex "K" pp. 72-73)

Meanwhile, on November 12, 1987, petitioners-intervenors Emiliana Bautista and Evangeline Bautista-Ortiz filed their motion for intervention in Civil Case No. 3782-P, which was denied by respondent Judge Manuel Dumatol in his order dated November 19, 1987. (Rollo, Annex "L" pp. 74-75; Annex "M" p. 76)

On December 4, 1987, said petitioners-intervenors filed their motion for reconsideration of the aforesaid order. In the order of January 21, 1988, the respondent judge denied petitioners-intervenors' motion for reconsideration; the motion of petitioners Avedana and Timbang to set aside the order dated January 4, 1988 and the writ of demolition dated January 6, 1988. (Rollo, Annex "N" pp. 77-80; Annex "O" p. 81)

On January 27, 1988, the petitioners filed a petition for certiorari, prohibition and injunction in the Court of Appeals. (Rollo, Annex "P" pp. 82-106)

And on February 8, 1988 a decision was issued by the Court of Appeals, the dispositive part thereof is as follows:

"WHEREFORE, the petition being insufficient in substance it is denied due course and is dismissed."

SO ORDERED. (Rollo, Decision, p. 150?157)

A motion for reconsideration was filed on March 2, 1988 on the said decision and on April 22, 1988 a resolution was issued denying such motion for reconsideration. (Rollo, Res. pp. 159-160; Annex "O" pp. 107-110)

Hence, this petition for review on certiorari.

In the resolution dated June 27, 1988 the Court required the respondents to comment thereon. (Rollo, petition, pp. 7-32; Res. p. 146)

Respondents having failed to comment within the required period, petitioners filed a motion to consider the case submitted for decision, which motion was noted by this Court in its resolution dated October 12, 1988. (Rollo, pp. 162-163; Res. p. 146)

On November 16, 1988 a manifestation and motion to consider respondent to have waived the right to comment on the petition and reiterating the prayer to consider the case submitted for decision was filed by the petitioners. (Rollo, pp. 165-167) In the resolution of January 9, 1989 said motion and manifestation were noted and granted. (Rollo, pp. 165-167; Res. 168)

In the resolution of March 8, 1989 the Court noted the change of address of the private respondent lawyer and required said counsel to SHOW CAUSE for failure to comment on the resolution dated June 27, 1988 and to comply to said resolution. (Rollo, p. 170)

A manifestation and compliance was filed on April 6, 1989 by the counsel of the private respondent explaining among others that insofar as petitioners Leonarda Avedana and Purificacion Timbang are concerned, their prayer for a restraining order has become moot and academic because their house was already demolished in the later part of 1988 and they likewise vacated the premises. On the issue raised by petitioners Emiliana Bautista and her daughter Evangeline the same was already resolved by this Court in G.R. No. 79958. (Rollo, pp. 171-172)

It appearing that the issues raised in the petition have already been resolved, it is evident that the same have become moot and academic.

Under similar circumstances this Court held that a case has become moot and academic and should be dismissed where the tenant has already vacated the premises and possession thereof has already been delivered to the owner. (Tinio v. Castro, 136 SCRA 658, 1985) Similarly, a petition to stop the demolition of property is rendered moot and academic by the demolition of the house and shanties. (Santiago v. Castro, 128 SCRA 545, 1984) or where the order of demolition was already implemented. (Nakpil v. Aragon, 95 SCRA 85, 1980)

Finally, a case is dismissed as moot and academic where a related case had resolved all the varied issues raised between the parties. (GSIS v. CA, 149 SCRA 379, 1987)

PREMISES CONSIDERED, the instant petition is dismissed for having become moot and academic.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

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